



May 30, 2000

Mr. John M. Knight
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2000-2114

Dear Mr. Knight:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 135692.

The City of Lubbock (the "city") received a request for "a copy of all itemized billings" received by the city for the defense of the city and its employees in "the Hampton suit." You assert that the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.107 of the Government Code. We have considered your arguments and reviewed the submitted information.

First, you contend that the documents in question are excepted from disclosure as attorney work product under Government Code section 552.101 in conjunction with Rule 192.5 of the Texas Rules of Civil Procedure. Section 552.101, however, is not applicable to the attorney work product privilege. *See* Open Records Decision No. 575 at 2 (1990). The privilege is properly asserted under section 552.111. *See* Open Records Decision No. 647 (1996). You also argue that the attorney fee bills are excepted from disclosure under section 552.103. A governmental body may withhold attorney work product from disclosure under sections 552.103 or 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions, and legal theories. *Id.* The first prong of the work product test, which requires a governmental body to show that the documents at issue were created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery or release believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *Id.* at 4.

However, section 552.022(a)(16) provides that "information that is in a bill for attorney's fees and is not privileged under the attorney-client privilege" is public information and is not excepted from required disclosure. Attorney fee bills may be excepted only if expressly

made confidential or if excepted under the attorney-client privilege. Sections 552.103 and 552.111 do not render the requested information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.–Dallas 1999, no pet.) (litigation exception discretionary; governmental body may waive section 552.103 exception). Therefore, you may not withhold the information under sections 552.103 or 552.111.

Next, we address whether the attorney-client privilege applies to the requested information. Section 552.107(1) excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107(1). In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. *Id.* at 5, 7. Section 552.107(1) does not protect purely factual information that does not reveal a client confidence. *Id.* at 7. Moreover, in Open Records Decision No. 589 (1991), the attorney general determined that the “attorney-client privilege” exception did not protect a requested list of “phone calls and conferences regarding a particular matter” or indications that an attorney had reviewed documents relevant to the attorney’s representation of the government body. We find that you have not demonstrated that the information contains client confidences or attorney legal advice; therefore, the information may not be withheld from public disclosure under section 552.107.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us. Therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

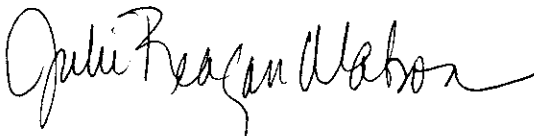
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Reagan Watson". The signature is fluid and cursive, with the first name "Julie" being the most prominent.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/nc

Ref: ID# 135692

Encl. Submitted documents

cc: Mr. Charles Dunn
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